Eight Mile Style, LLC et al v. Apple Computer, Incorporated

Doc. 38 Att. 3

EXHIBIT 2

Plaintiff Eight Mile Style, LLC's Responses to the Defendants' First Set of Requests for Production of Documents dated March 21, 2008

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

EIGHT MILE STYLE, LLC and
MARTIN AFFILIATED, LLC,

Plaintiffs,

vs.

APPLE COMPUTER, INC. and
AFTERMATH RECORDS d/b/a
AFTERMATH ENTERTAINMENT,

Defendants.

Case No. 2:07-cv-13164
Hon. Anna Diggs Taylor
Magistrate Judge Donald A. Scheer

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PLAINTIFF EIGHT MILE STYLE, LLC'S RESPONSES TO THE DEFENDANTS' FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS

Plaintiff Eight Mile Style, LLC ("Eight Mile") provides the following objections and responses to the First Set of Requests for Production of Documents ("Requests") propounded by Defendants Apple Inc. (named as Apple Computer, Inc.) and Aftermath Records d/b/a Aftermath Entertainment.

GENERAL OBJECTIONS

The following General Objections apply to and are incorporated in each and every response to each and every Request, whether or not such General Objections are expressly incorporated by reference in such response.

1. Eight Mile objects to the Requests to the extent they collectively or individually

seek information or documents subject to or protected by the attorney-client privilege, the attorney work product privilege or any other privilege or protection from disclosure. Eight Mile hereby invokes all such privileges to the extent implicated by each Request and exclude privileged and protected information from its responses to the Requests. Any disclosure of information protected by those privileges is inadvertent, and is not intended to waive any privilege or protection.

2. Eight Mile objects to the Requests to the extent they purport to impose on Plaintiff any obligations that are different from or greater than any duty imposed by the Federal Rules of Civil Procedure, the Local Rules of the United States District Court for the Eastern District of Michigan, or any other applicable law or rule.

3. Eight Mile objects to the Requests as duplicative, unduly burdensome, and harassing to the extent they seek information that is equally available to Defendants, or information that could be derived or ascertained by Defendants with substantially the same effort that would be required of Plaintiffs from review of the documents produced in this case.

4. Eight Mile objects to the Requests to the extent they seek disclosure of items that are not in Eight Mile's possession, custody, or control, or that are publicly available.

5. Eight Mile objects to the Requests to the extent they seek items that are confidential, proprietary, trade secret information, and/or competitively sensitive material. Eight Mile will disclose such responsive, non-privileged information only upon entry of, and in accordance with the terms of, an appropriate protective order.

6. To the extent that the Requests seek information concerning an identified contention or factual issue, Eight Mile objects on the grounds that Eight Mile has not completed its investigation of the facts relevant to this case. Eight Mile's responses are necessarily

preliminary and are made without prejudice to its right to disclose, introduce or rely upon information or documents that may be later discovered or produced.

7. Eight Mile will make reasonable efforts to search for information in the places where it is reasonably likely to be found, and Eight Mile objects to the Requests to the extent they purport to require a broader search.

8. In responding to the Requests, Eight Mile does not waive, or intend to waive, any privilege or objection, including, but not limited to, any objections to the competency, relevance, materiality, or admissibility of any of the items disclosed in response to the Requests. No objection or response made in these responses and objections shall be deemed to constitute a representation by Eight Mile as to the existence or non-existence of the items requested.

9. Eight Mile objects to Requests containing the defined term "document(s)" as vague, ambiguous, overly broad and unduly burdensome to the extent that the term as used in any Request expands Eight Mile's duty to produce documents or items beyond the scope required of the Federal Rules of Civil Procedure. Eight Mile also objects to Requests containing the defined term "document(s)" to the extent that any Request containing the defined term seeks information that is privileged, protected and confidential. Eight Mile also objects to the extent use of the defined term "document(s)" is intended to seek information or items that are not reasonably calculated to lead to the discovery of admissible evidence of information.

10. Eight Mile objects to the Requests as vague, ambiguous, overly broad and unduly burdensome to the extent any Request requires Eight Mile to provide information that is different from or at a different time than as required under Federal Rule of Civil Procedure 26(a)(2).

11. Eight Mile objects to the Requests as vague, ambiguous, overly broad and unduly burdensome to the extent any Request commands or requires Eight Mile to provide responses or

items in any manner or to any extent that is different that the scope provided by Rules 33 and 34 of the Federal Rules of Civil Procedure.

12. Eight Mile objects to Requests containing the defined term "Eminem" as vague, ambiguous, overly broad and unduly burdensome to the extent the term includes any person(s), or entity or entities other than the individual Marshall B. Mathers III professionally known as Eminem.

13. Eight Mile objects to the definition contained in paragraph 10 of Defendants' Definitions and Instructions as vague, ambiguous, overly broad, unintelligible and unduly burdensome. Eight Mile interprets defined terms as set forth herein and other terms according to its best understanding of such terms, including the Federal Rules of Civil Procedure.

OBJECTIONS AND RESPONSES TO REQUESTS

REQUEST NO. 1:

All documents that You reviewed or relied upon in drafting Your Complaint in this action.

ANSWER TO REQUEST NO. 1:

Eight Mile incorporates its General Objections above. Eight Mile specifically objects to this Request to the extent it calls for information protected by the attorney-client privilege and work product doctrine. Eight Mile further objects to this Request as vague, ambiguous, overly broad and unduly burdensome. Eight Mile further objects to this Request to the extent the information requested is within the possession, custody or control of Defendants.

Subject to and without waiver of the foregoing General and Specific Objections, Eight Mile will produce relevant, non-privileged documents responsive to this request to the extent they have not been already produced.

REQUEST NO. 2:

All documents that You refer to in Your Complaint.

ANSWER TO REQUEST NO. 2:

Eight Mile incorporates its General Objections above. Eight Mile specifically objects to this Request to the extent the information requested is within the possession, custody or control of Defendants.

Subject to and without waiver of the foregoing General and Specific Objections, Eight Mile will produce relevant, non-privileged documents responsive to this request to the extent they have not been already produced.

REQUEST NO. 3:

All documents that You refer to in any of Your responses to Defendants' First Set of Interrogatories, served concurrently with these Requests for Production.

ANSWER TO REQUEST NO. 3:

Eight Mile incorporates its General Objections above. Eight Mile specifically objects to this Request to the extent it calls for information protected by the attorney-client privilege and work product doctrine. Eight Mile further objects to this Request to the extent the information requested is within the possession, custody or control of Defendants.

Subject to and without waiver of the foregoing General and Specific Objections, Eight Mile will produce relevant, non-privileged documents responsive to this request to the extent they have not been already produced.

REQUEST NO. 4:

All documents that You reviewed or relied upon in preparing Your responses to Defendants' First Set of Interrogatories.

ANSWER TO REQUEST NO. 4:

Eight Mile incorporates its General Objections above. Eight Mile specifically objects to this Request to the extent it calls for information protected by the attorney-client privilege and work product doctrine. Eight Mile further objects to this Request as vague, ambiguous, overly broad and unduly burdensome. Eight Miles further objects to this Request to the extent the information requested is within the possession, custody or control of Defendants.

Subject to and without waiver of the foregoing General and Specific Objections, Plaintiffs will produce relevant, non-privileged documents responsive to this request to the extent they have not been already produced.

REQUEST NO. 5:

All documents that You refer to in Your Initial Disclosures in this action.

ANSWER TO REQUEST NO. 5:

Eight Mile incorporates its General Objections above. Eight Mile specifically objects to this Request to the extent the information requested is within the possession, custody or control of Defendants.

Subject to and without waiver of the foregoing General and Specific Objections, Eight Mile will produce relevant, non-privileged documents responsive to this request to the extent they have not been already produced.

REQUEST NO. 6:

All documents that relate to any of Your allegations in Your Complaint.

ANSWER TO REQUEST NO. 6:

Eight Mile incorporates its General Objections above. Eight Mile specifically objects to this Request to the extent it calls for information protected by the attorney-client privilege and work product doctrine. Eight Mile further objects to this Request as vague, ambiguous, overly broad and unduly burdensome in that it does not define what it means to "relate to" any of Eight Mile's allegations in the Complaint. Eight Mile further objects to this Request to the extent the information requested is within the possession, custody or control of Defendants.

Subject to and without waiver of the foregoing General and Specific Objections, Eight Mile will produce relevant, non-privileged documents responsive to this request to the extent they have not been already produced.

REQUEST NO. 7:

All documents that support, or that are contrary to, Your contention that Apple has distributed Eminem recordings embodying the works that are the subject of your Complaint "pursuant to a purported license with Universal," as alleged by You in Paragraph 12 of Your Complaint.

ANSWER TO REQUEST NO. 7:

Eight Mile incorporates its General Objections above. Eight Mile specifically objects to this Request to the extent it calls for information protected by the attorney-client privilege and work product doctrine. Eight Mile further objects to this Request as vague, ambiguous, overly broad and unduly burdensome. Eight Mile objects to the language "contrary to" as vague and ambiguous, and would involve analysis by counsel which is protected by the work product doctrine. Eight Mile further objects to this Request to the extent the information requested is within the possession, custody or control of Defendants.

Subject to and without waiver of the foregoing General and Specific Objections, Eight Mile will produce relevant, non-privileged documents responsive to this request to the extent they have not been already produced.

REQUEST NO. 8:

All documents that support, or that are contrary to, Your contention that "Eight Mile and Martin have never authorized Universal to license the works to Apple," as alleged by You in Paragraph 12 of Your Complaint.

ANSWER TO REQUEST NO. 8:

Eight Mile incorporates its General Objections above. Eight Mile specifically objects to this Request to the extent it calls for information protected by the attorney-client privilege and work product doctrine. Eight Mile further objects to this Request as vague, ambiguous, overly broad and unduly burdensome. Eight Mile objects to the language "contrary to" as vague and ambiguous, and would involve analysis by counsel which is protected by the work product doctrine. Eight Mile further objects to this Request to the extent the information requested is within the possession, custody or control of Defendants. Eight Mile further objects to the extent the request seeks expert testimony or opinion.

Subject to and without waiver of the foregoing General and Specific Objections, Eight Mile will produce relevant, non-privileged documents responsive to this request to the extent they have not been already produced.

REQUEST NO. 9:

All documents that support, or that are contrary to, Your contention that "Eight Mile and Martin have never authorized Universal to engage in reproduction or distribution of the digital transmissions through third parties or otherwise," as alleged by You in Paragraph 12 of Your Complaint.

ANSWER TO REQUEST NO. 9:

See Response to Request No. 8.

REQUEST NO. 10:

All documents that support, or that are contrary to, Your contention that "Universal has, on any number of occasions, asked Eight Mile and Martin to execute agreements allowing Apple to reproduce and distribute the digital transmissions, but Eight Mile and Martin have not provided that permission," as alleged by You in Paragraph 12 of Your Complaint.

ANSWER TO REQUEST NO. 10:

See Response to Request No. 8.

REQUEST NO. 11:

All documents that support, or that are contrary to, Your claim that You have suffered damages (including without limitation any actual damages that you may seek under 17 U.S.C. § 504) as a result of any of Defendants' actions.

ANSWER TO REQUEST NO. 11:

See Response to Request No. 8.

REQUEST NO. 12:

All documents that constitute, refer to or relate to communications You have had with any Person (including without limitation Eminem, or any of Eminem's representatives) regarding this lawsuit, or the lawsuit captioned *F.B.T. Productions, LLC et al. v. Aftermath Records d/b/a Aftermath Entertainment et al.*, Case No. CV-07-03314 (C.D. Cal.), or any of the matters alleged in either action.

ANSWER TO REQUEST NO. 12:

Eight Mile incorporates its General Objections above. Eight Mile specifically objects to this Request to the extent it calls for information protected by the attorney-client privilege and work product doctrine. Eight Mile further objects to this Request as vague, ambiguous, overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. Eight Mile further objects to this Request to the extent the information requested is within the possession, custody or control of Defendants. Eight Mile further objects to the extent that such documents are not relevant to the claims in the above-captioned matter. Eight Mile further objects to this Interrogatory to the extent it seeks discovery in a separate action entitled *F.B.T. Productions, LLC, et al. v. Aftermath Records d/b/a Aftermath Entertainment, et al.*, Case No. CV-07-03314 (C.D. Cal.), to which Eight Mile is not a party, and which such discovery is subject to a separate scheduling order inapplicable to this action. Eight Mile further objects to the extent the request seeks expert testimony or opinion.

Subject to and without waiver of the foregoing General and Specific Objections, Eight Mile will produce relevant, non-privileged documents responsive to this request to the extent they have not been already produced.

REQUEST NO. 13:

All documents that constitute, refer to or relate to communications You have had with any Person regarding Eminem.

ANSWER TO REQUEST NO. 13:

Eight Mile incorporates its General Objections above. Eight Mile specifically objects to this Request to the extent it calls for information protected by the attorney-client privilege and work product doctrine. Eight Mile further objects to this Request as vague, ambiguous, overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence, in that it does not define or limit communications with "any Person" or "regarding" Eminem. Eight Mile further objects to this Request to the extent the information requested is within the possession, custody or control of Defendants. Eight Mile further objects to the extent the request seeks expert testimony or opinion.

Subject to and without waiver of the foregoing General and Specific Objections, Eight Mile will produce relevant, non-privileged documents responsive to this request to the extent they have not already been produced.

REQUEST NO. 14:

All documents that constitute, refer to or relate to communications You have had with Eminem or any of Eminem's representatives.

ANSWER TO REQUEST NO. 14:

See Response to Request 13.

REQUEST NO. 15:

All documents that discuss, refer to or relate to the March 9, 1998 Agreement, including without limitation Paragraph 6 thereof.

ANSWER TO REQUEST NO. 15:

Eight Mile incorporates its General Objections above. Eight Mile specifically objects to this Request to the extent it calls for information protected by the attorney-client privilege and work product doctrine. Eight Mile further objects to this Request as vague, ambiguous, overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. Eight Mile further objects to this Request to the extent the information requested is within the possession, custody or control of Defendants. Eight Mile further objects to the extent the request seeks expert testimony or opinion.

Subject to and without waiver of the foregoing General and Specific Objections, Eight Mile will produce relevant, non-privileged documents responsive to this request to the extent they have not already been produced.

REQUEST NO. 16:

All documents that discuss, refer to or relate to the July 2, 2003 Agreement, including without limitation Paragraph 6 thereof.

ANSWER TO REQUEST NO. 16:

See Response to Request 15.

REQUEST NO. 17:

All documents that discuss, refer to or relate to the distribution of Eminem sound recordings that embody any of the works that are the subject of your Complaint, including the distribution of the same as digital downloads, mastertones, ringtones, or digital streams.

ANSWER TO REQUEST NO. 17:

See Response to Request 15.

REQUEST NO. 18:

All documents sufficient to identify all Persons that have an ownership interest in each of the works for which You seek damages through Your Complaint.

ANSWER TO REQUEST NO. 18:

Eight Mile incorporates its General Objections above.

Subject to and without waiver of the foregoing General Objections, Eight Mile responds that relevant information that may be within the scope of this Request may be determined by Defendants' examination of the Complaint filed in this matter, in particular paragraph 8, and collective Exhibit A attached to the Complaint. Defendants are in possession of the Complaint and Exhibit A referenced therein and the burden of deriving that information is substantially the same for Defendants as for Eight Mile and therefore Eight Mile refers Defendants to same. Further, see Schedule 1, Plaintiffs' Compositions, attached to Eight Mile's Interrogatory Responses. Notwithstanding the foregoing, Eight Mile will produce relevant, non-privileged documents responsive to this request to the extent they have not already been produced.

REQUEST NO. 19:

All documents sufficient to identify any predecessors, successors, parents, subsidiaries, divisions, affiliates, or other entities within the operation or control of Plaintiff.

ANSWER TO REQUEST NO. 19:

Eight Mile incorporates its General Objections above. Eight Mile specifically objects to this Request to the extent it calls for information protected by the attorney-client privilege and work product doctrine. Eight Mile further objects to this Request as vague, ambiguous, overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence.

Eight Mile will produce relevant, non-privileged documents responsive to this request to the extent they have not been already produced.

REQUEST NO. 20:

All documents that discuss, relate to or refer to any expert witness(es) that You have communicated with regarding the claims in this action, including without limitation all correspondence, billing records, documents received from such expert witness, documents relied upon by such expert witness in forming his or her opinion, and a curriculum vitae for such expert witness retained by You.

ANSWER TO REQUEST NO. 20:

Eight Mile incorporates its General Objections above. Eight Mile specifically objects to this Request to the extent it calls for information protected by the attorney-client privilege and work product doctrine. Eight Mile further objects to this Request as vague, ambiguous, overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. The expert witness disclosure deadline has not yet occurred and any request for such information is premature.

Subject to and without waiver of the foregoing General and Specific Objections, Eight Mile will produce relevant and discoverable documents at the appropriate time.

DATED: March 21, 2008

Respectfully submitted,

KING & BALLOW

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing document was served via U.S. Mail, postage pre-paid, and via e-mail to the following:

Counsel	On behalf of
Daniel D. Quick, Esq. Dickinson Wright PLLC 38525 Woodward Ave Suite 2000 Bloomfield Hills, MI 48304 (t): (248) 433-7200 (e): dquick@dickinsonwright.com Kelly M. Klaus, Esq. Munger, Tolles & Olson LLP 355 South Grand Ave Suite 3500 Los Angeles, CA 90071-1560 (t): (213) 683-9238 (e): kelly.klaus@mto.com	Apple Computer, Inc. and Aftermath Records d/b/a Aftermath Entertainment

this 21st day of March 2008.